

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.560 OF 2004

IN
SUIT NO.3860 OF 2003

M/s.United Corporation ... Plaintiffs

V/s.

Devikabai Parshuram Bhoir & Ors. ... Defendants

Mr.Abhay Patki i/b Tambhane & co. for Plaintiffs
Mr.R.D. Soni i/b S.N. Gawde for Defendants

CORAM: SMT.NISHITA MHATRE, J.

DATED: DECEMBER 20, 2005

P.C.:

. This Chamber Summons has been filed for revoking the leave granted under Clause 12 of the Letters Patent. According to the defendants, the suit which has been filed is a "suit for land". The land is situated outside the local limits of Mumbai. The defendants dwell outside Greater Mumbai and, therefore, according to the defendants the suit ought not to have been filed in this Court and the leave granted under Clause 12 of the Letters Patent should be revoked. It is submitted by Mr.Soni on behalf of the defendants that prayer clause (b) of the plaint is comprehensive and includes a prayer for possession. Therefore, according to him this would be a "suit for land" and would not be maintainable

in this Court in view of the provisions of clause 12. He relies on the judgment in the case of *Bhuramull v/s. Ram Kumar*, AIR (38) 1951 Calcutta 105; *Vishram Parbat v/s. Shruti Builders*, 2000 (1) Bom.C.R. 209.

2. Mr.Patki, appearing on behalf of the Plaintiffs, points out that the present suit cannot be considered as a "suit for land" since it has been filed for the specific performance of a contract for sale under which certain terms were fulfilled by the defendants. The possession of the land is already with the plaintiff and therefore, this cannot be treated as a suit for land. He also urges that the jurisdiction of the Court would be determined by the averments in the plaint. The plaintiffs have categorically averred that the suit property is in their possession and, therefore, the suit cannot be treated as a suit for land and the leave granted under clause 12 has been properly granted.

3. He supports his submission by pointing out the judgment of the Supreme Court in the case of *Adcon Electronics Pvt. Ltd. v/s.Daulat & Anr.*, (2001) 7 SCC 698. The Supreme Court has in this case succinctly laid down circumstances in which a suit could be treated as a suit for land. The Apex Court considered the judgments of this Court in *His Highness Shrimant Maharaj*

Yashvantrav Holkar of Indore v/s. Dadabhai Cursetji Ashburner, ILR (1890) 14 BOM 354 and *Yenkoba Balshet Kasar v/s. Rambhaji*, (1872) 9 Bom HCR 12; of Calcutta High Court in *Debendra Nath Chowdhury v/s. Southern Bank Ltd.*, AIR 1960 Cal 626. The Supreme Court then referred to the judgment in the case of *Moolji Jaitha & Co. v/s. Khandesh Spg. and Wvg. Mills Co. Ltd.*, AIR 1950 FC 83 where there was a divergence of opinion among the learned Judges of the Federal Court. The Supreme Court then has reproduced the observations of the learned Judges of the Federal Court and after considering the observations of Justice Mahajan have held that a suit for land has to be determined on the averments made in the plaint with reference to the reliefs claimed therein. The Supreme Court has then held in paragraphs 15, 16 and 17 thus:

15. From the above discussion it follows that a "suit for land" is a suit in which the relief claimed relates to title to or delivery of possession of land or immovable property. Whether a suit is a "suit for land" or not has to be determined on the averments in the plaint with reference to the reliefs claimed therein; where the relief relates to adjudication of title to land or immovable property or delivery of possession of the land or immovable property, it will be a "suit for land". We are in respectful agreement with the view expressed by Mahajan, J. in *Moolji Jaitha* case.

16. In a suit for specific performance of contract for sale of immovable property

containing a stipulation that on execution of the sale deed the possession of the immovable property will be handed over to the purchaser, it is implied that delivery of possession of the immovable property is part of the decree of specific performance of contract. But in this connection it is necessary to refer to Section 22 of the Specific Relief Act, 1963 which runs:

"22. Power to grant relief for possession, partition, refund of earnest money, etc. - (1) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908, any person suing for the specific performance of a contract for the transfer of immovable property may, in an appropriate case, ask for -

(a) possession, or partition and separate possession, of the property, in addition to such performance; or

(b) any other relief to which he may be entitled, including the refund of any earnest money or deposit paid or made by him, in case his claim for specific performance is refused

(2) No relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed:

Provided that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceeding, allow him to amend the plaint on such terms as may be just for including a claim for such relief."

17. It may be seen that sub-section (1) is an enabling provision. A plaintiff in a suit of specific performance may ask for further reliefs mentioned in clauses (a) and (b) thereof. Clause (a) contains reliefs of possession and partition and separate possession of the property, in addition to specific performance. The mandate of sub-section (2) of Section 22 is that no relief under clauses (a) and (b) of sub-section (1) shall be granted by the court

unless it has been specifically claimed. Thus it follows that no court can grant the relief of possession of land or other immovable property, subject matter of the agreement for sale in regard to which specific performance is claimed unless the possession of the immovable property is specifically prayed for.

4. The Apex Court noted that in the case before it that the suit was for specific performance of the agreement of sale of the suit property wherein the delivery of the suit property was not specifically claimed and therefore, it could not be treated as a "suit for land".

5. In the present case, there are averments contained in paragraphs 10 and 15 of the plaint indicating that the plaintiffs are in possession of the suit premises. Besides there is no specific prayer made for handing over possession of the suit property. Mr.Soni's submission that possession is with the plaintiff on account of the power of attorney executed by the defendants in favour of the plaintiffs also cannot be accepted. Once the physical possession of the suit property is with the plaintiffs and they do not specifically claim the relief of possession, the suit cannot be treated as a "suit for land". Therefore, the leave granted under clause 12 need not be revoked.

6. Chamber Summons dismissed.